D. M. asks the Utah Labor Commission to review Administrative Law Judge Sessions' decision regarding payment of Mr. M.'s medical expenses under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

ISSUE PRESENTED

In his decision dated March 20, 2006, Judge Sessions concluded that one-half of Mr. M.'s medical care after August 20, 2001, was attributable to injuries Mr. M. suffered from a work accident at ASAP on March 23, 2001. On that basis, Judge Sessions ordered the Uninsured Employers' Fund ("UEF") [1] to pay one-half of Mr. M.'s ongoing medical expenses. Mr. M. has now filed a motion for review of Judge Sessions' decision in which he argues the UEF is liable for the entire amount of his ongoing medical expenses.

FINDINGS OF FACT

While working for ASAP on March 23, 2001, Mr. M. fell 3 ½ feet into a pit and injured his back. He filed an application with the Commission to compel ASAP to pay disability compensation and medical expenses for his back injury. The Commission assigned case number 2001980 to the application and transferred it to Judge Poelman for adjudication. Then, on August 20, 2001, while Mr. M.'s claim against ASAP was still pending, he suffered a second injury working as a carpet layer for Heaven's Best Carpet Co.

Judge Poelman held an evidentiary hearing in case number 2001980 on April 9, 2002. On May 30, 2003, Judge Poelman issued his decision noting Mr. M.'s two work-related injuries. Judge Poelman also noted that Mr. M. had already settled his workers' compensation claim arising from his second injury at Heaven's Best for payment of medical and disability benefits totaling $20,886.86. Judge Poelman ordered ASAP and UEF to pay medical and disability benefits for Mr. M.'s first injury.

On August 19, 2003, Mr. M. filed a second application for hearing against ASAP. This application sought to compel the UEF to pay for Mr. M.'s ongoing medical treatment, which Mr. M. attributed to his March 23, 2001, accident at ASAP.

Rather than proceed with an evidentiary hearing, the parties submitted a stipulation of fact and asked Judge Sessions to appoint a panel to review the medical aspects of Mr. M.'s claim. Judge Sessions did so, and the panel submitted its report on February 27, 2006. In summary, the panel

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1 Because Mr. M.'s employer, ASAP, is uninsured and insolvent, the UEF is required by §34A-2-704 of the Act to pay any benefits due Mr. M. from ASAP.

concluded Mr. M.'s medical care between August 20 and November 14, 2001, was equally attributable to his first work accident at ASAP and his second work accident at Heaven's Best. The panel further concluded that the medical care Mr. M. had received after November 14, 2001, was "reasonably related" only to the second work accident at Heaven's Best. As to future medical care, the panel concluded Mr. M. might require occasional pain medication, braces, and physical therapy, and that such medical care was attributable equally to each of his two work accidents.

DISCUSSION AND CONCLUSION OF LAW

Judge Sessions adopted the medical panel's findings and ordered the UEF to pay one-half of Mr. M.'s "reasonable and necessary" medical expenses incurred after November 14, 2001. Mr. M. argues Judge Sessions' decision is incorrect because "Utah law does not permit for the apportionment of the payment of medical expenses."

Mr. M. cites *McKesson Corp. v. Labor Commission,* 41 P. 3d 468, 472 (Utah App. 2002) as authority for his argument that liability for payment of medical expenses cannot be apportioned between employers. However, *Mckesson* dealt with a different issue--whether a worker who has suffered a first work-related injury is entitled to additional benefits for a subsequent non-industrial aggravation of the primary injury. *McKesson* did not deal with the situation presented here of two work-related injuries, each compensable in its own right, which act together to necessitate additional medical treatment.

The Utah Supreme Court's decision in *U.S.F & G. v. Industrial Commission,* 657 P.2d 764, 767 (Utah 1983) is more closely relevant to Mr. M.'s circumstances. In *U.S.F. & G.,* the worker had two accidents while employed by the same employer, but the employer had different insurance carriers at the time of each accident. The Industrial Commission apportioned liability for medical care between the two carriers. On appeal, the Supreme Court accepted apportionment under such circumstances, but remanded the case for the Industrial Commission to obtain a medical panel opinion as to what the proper apportionment should be.

In Mr. M.'s case, Judge Sessions' apportionment is based on a medical panel opinion, thereby satisfying the objection that prompted a remand in *U.S.F. & G.* And although *U.S.F. & G.* dealt with apportionment between two insurance carriers, the Commission sees no reason why the same principle should not apply between two employers.

In summary, Mr. M. is entitled to payment of reasonable expenses necessary to treat the work injuries he suffered from his accidents at ASAP and Heaven's Best. Because these two accidents have contributed equally to his need for medical treatment, Judge Sessions correctly assigned one-half the medical liability to ASAP and the UEF, and one-half to Heaven's Best and its insurance carrier.[2]

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2. Heaven's Best's may have already paid its liability by virtue of the settlement agreement between Mr. M. and Heaven's Best.

ORDER

The Commission affirms Judge Sessions' decision and denies Mr. M.'s motion for review. It is so ordered.

Dated this 9th day of May, 2006.

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R. Lee Ellertson
Utah Labor Commissioner